

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JONATHAN DAROSA,

Plaintiff,

v.

LOWES HOME CENTERS, LLC DBA
LOWES HOME IMPROVEMENT,

Defendant.

No. 2:23-cv-0123 WBS DB PS

ORDER

On January 20, 2023, this action was removed from the Placer County Superior Court. (ECF No. 1.) At that time plaintiff was proceeding through counsel Jack Duran, Jr. On January 27, 2023, defendant filed a motion to dismiss. (ECF No. 9.) On February 22, 2023, attorney Gregory T. Fayard, acting as counsel for Kim Duran as Attorney-in-Fact for Jack Duran, Jr., filed a motion seeking to allow attorney Jack Duran Jr to withdraw as plaintiff's counsel. (ECF No. 13.) Therein, attorney Fayard explained that withdrawal was necessary due to attorney Duran's "poor health and prolonged treatment and recovery," requiring Duran to "wind down his litigation practice." (*Id.* at 3.) Kim Duran filed a declaration in support explaining that plaintiff "failed to respond to email or phone messages" seeking a signed stipulation with respect to attorney Duran's withdrawal. (ECF No. 13-1 at 2.)

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1 On March 31, 2023, attorney Fayard filed a declaration stating that plaintiff was then “in
2 custody at the Sacramento County Main Jail,” and thus could not appear in person at the motion
3 to withdraw hearing. (ECF No. 16 at 2.) On April 4, 2023, the assigned District Judge granted
4 attorney Duran’s motion to withdraw and referred the matter to the undersigned as plaintiff was
5 “now appearing pro se.” (ECF No. 19 at 2.)

6 Under the circumstances presented here the undersigned has some concerns with respect
7 to plaintiff’s awareness of defendant’s motion to dismiss. Accordingly, in light of the unusual
8 history of this case, plaintiff’s pro se status, and out of an abundance of caution, defendant’s
9 submitted motion will be denied without prejudice to renewal.¹

10 Accordingly, IT IS HEREBY ORDERED that defendant’s January 27, 2023 motion to
11 dismiss (ECF No. 9) is denied without prejudice to renewal.

12 Dated: July 25, 2023

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15 DEBORAH BARNES
16 UNITED STATES MAGISTRATE JUDGE
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28 ¹ In this regard, defendant may re-notice the motion for hearing before the undersigned, providing plaintiff with the appropriate notice.